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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,838	03/24/2004	John W. Lundstrom		6716

7590 03/30/2005  
JOHN W. LUNDSTROM  
603 CRESTVIEW DR.  
GLEN DORA, CA 91741

EXAMINER

KRAMSKAYA, MARINA

ART UNIT PAPER NUMBER

2858

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/808,838

Applicant(s)

LUNDSTROM, JOHN W.

Examiner

Marina Kramskaya

Art Unit

2858

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03/24/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence(s) of the specification or in an application data sheet by identifying the prior application by application number (37 CFR 1.78(a)(2) and (a)(5)). A reference to the provisional application 60/458,896, filed 03/31/2003, must be made under the heading CROSS-REFERENCE TO RELATED APPLICATIONS.

### ***Claim Objections***

2. Claims 3-4 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the examiner will treat Claim 3 as depending on Claim 2, and Claim 4 as depending on Claim 3.

3. Claim 4 is objected to because of the following informalities: line 3 of Claim 4 should recite "...electrode to be twisted..." or "...electrode to twist...". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Gerrit, US 4,481,474.

As per Claim 1, Gerrit discloses a metallic soil penetrating electrode **4** for making an electrical connection with the soil (FIG.1, column 3, lines 46-47) for measuring soil electrical parameters (column 1, lines 11-12), that has a long, small angle conical part (bottom of **7**) that is in contact with the soil.

As per Claim 2, the electrode, as disclosed by Gerrit, also has a shoulder (top of **7** near **4**) that establishes the major diameter of the conical part. Further, **4** (as seen at the top of **7**) establishes a gauge to which the electrode can be driven into the ground.

As per Claim 3, the electrode, as disclosed by Gerrit, also has a shaft **4**, that is undercut for preventing any loose soil that may fall into the hole, from

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making a significant change in the electrode contact with the soil. Although, the function is not specifically disclosed, the structure provides the function.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerrit in view of case law, *In re Dulberg*.

Gerrit discloses an electrode as applied to Claim 3 above, as disclosed by Gerrit, also has a rod **19**, placed perpendicular to the undercut shaft **4**, to allow the electrode to be twisted to facilitate removal from the compact soil (column 3, lines 60-64).

Gerrit does not teach a hole at the top of the undercut shaft for inserting and removing the said bar.

*In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961), teaches that it would be obvious to a person of ordinary skill in the art to make parts separable (ei. removable). In this case, it would have been obvious to a person of ordinary skill in the art to make the bar removable from the undercut shaft.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lagmanson, US 6,404,203, discloses an electrode with a conical portion inserable into the soil and a perpendicular bar. Cambell, US 5,479,104, and Hocking, US 6,615,653, disclose an electrode for insertion into the soil with a conical portion and an abutting shoulder.

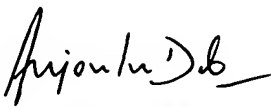
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Kramskaya whose telephone number is (571)272-2146. The examiner can normally be reached on M-F 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (571)272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MK

  
**ANJAN DEB**  
**PRIMARY EXAMINER**

Marina Kramskaya  
Examiner  
Art Unit 2858

